

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)
	)
CARA ENTERPRISES, INC.	)
	)
Petition for Modification or, in the Alternative,	)
Revocation of License of JJ's Rooter Service Inc.	)
for Station WNGT994, Las Vegas, Nevada	)
	)
and	)
	)
JJ'S ROOTER SERVICE, INC.	)
	)
Licensee of Trunked Industrial/Business Pool	)
Radio Service Station WNGT994, Las Vegas,	)
Nevada	)

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 29, 2002**

**Released: May 1, 2002**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On October 19, 2000, Cara Enterprises (Cara) filed a request that the Commission modify, or in the alternative, revoke the above-captioned license granted to JJ's Rooter Service, Inc. (JJ's).<sup>1</sup> For the reasons set forth below, we grant Cara's petition to the extent that we initiate a proceeding to modify JJ's license to change the station class of one of its authorized frequencies.

**II. BACKGROUND**

2. Frequency coordination in the Private Land Mobile Radio (PLMR) Services is the process by which a private entity certified by the Commission recommends the most appropriate frequencies for applicants in designated radio services.<sup>2</sup> In 1986, the Commission adopted frequency coordination rules and procedures in an effort to maximize service to the public by assuring that the assignment and management of the PLMR spectrum is performed in an efficient and effective manner.<sup>3</sup> The Commission has stated that accurate information is fundamental to its ability to review effectively the frequency recommendations made by FCC-certified frequency coordinators in connection with the

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<sup>1</sup> Petition for Modification or, in the Alternative, Revocation of License filed by Cara Enterprises, Inc. on October 19, 2000 (Petition).

<sup>2</sup> Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 83-737, 103 FCC 2d 1093 (1986).

<sup>3</sup> *Id.* at 1094-95 ¶ 2.

Commission's licensing determinations.<sup>4</sup> A fundamental aspect of frequency coordination, in any radio service, is an accurate determination by a FCC-certified coordinator as to whether the proposed operations potentially will cause harmful interference to existing co-channel or adjacent licensees.<sup>5</sup>

3. In 1997, the Commission allowed centralized trunking in the PLMR bands between 150 MHz and 512 MHz.<sup>6</sup> The Commission emphasized that trunking would be permitted only in those areas where exclusivity is recognized by the Commission or where an applicant/licensee has obtained the consent of all licensees whose service areas overlap a circle with a radius of seventy miles from the proposed trunked system's base station.<sup>7</sup> In 1999, the Commission provided applicants with an alternate means of obtaining an authorization for a trunked system by obtaining concurrence whenever the 21 dBu (UHF) or 19 dBu (VHF) interference contour from a proposed trunked station intersects the 39 dBu service contour (UHF) or 37 dBu service contour (VHF) of any existing co-channel or adjacent channel station.<sup>8</sup> In 2000, the Commission modified the definition of trunked systems authorized in the 150-512 MHz bands.<sup>9</sup> The Commission has stated that the service area of a trunked licensee "shall be protected against co-channel and adjacent channel interference."<sup>10</sup>

4. On April 28, 1998, Lake Las Vegas Joint Venture (Lake Las Vegas) was granted an authorization with call sign WPLZ767 to operate an Industrial/Business Pool (IG) station in the Clark County, NV area on, *inter alia*, 451.7375 MHz.<sup>11</sup> On June 12, 1998, JJ's filed an application for authorization to operate an Industrial/Business Pool Trunked (YG) station in the Las Vegas, NV area.<sup>12</sup> Forest Industries Telecommunications (FIT), an FCC-certified frequency coordinator, submitted JJ's application, with a frequency recommendation, to the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division.<sup>13</sup> On August 31, 1998, the Branch granted JJ's

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<sup>4</sup> *Id.* at 1148 ¶ 111, 1150 ¶ 116.

<sup>5</sup> See generally American Mobile Telecommunications Association, Inc. and American Trucking Associations, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12416, 12422-23 ¶¶ 13-15 (WTB PSPWD 2001).

<sup>6</sup> In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14337-38 ¶¶ 56-59 (1997).

<sup>7</sup> *Id.*

<sup>8</sup> In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 10922, 10926-27 ¶¶ 6-9 (1999) (*Refarming Third MO&O*).

<sup>9</sup> 47 C.F.R. § 90.187. The Commission's Part 90 Biennial Review proceeding amended Section 90.187, but did not change the substance of the rule provision at issue here. See 1998 Biennial Regulatory Review, 47 C.F.R Part 90, Private Land Mobile Radio Services, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 98-182, 15 FCC Rcd 16673 (2000).

<sup>10</sup> *Refarming Third MO&O*, 14 FCC Rcd at 10931 ¶ 20.

<sup>11</sup> FCC File No. C000694.

<sup>12</sup> FCC File No. D109356, subsequently modified by FCC File No. D146882 on November 9, 2000.

<sup>13</sup> See FAC # NV8EE00162.

application to operate Trunked Industrial/Business Pool Station WNGT994 in Las Vegas, NV on several frequencies, including frequency 451.7500 MHz.

5. In their Petition dated October 19, 2000, Cara requests that the Commission modify or revoke the license grant to JJ's.<sup>14</sup> Cara alleges procedural flaws in the filing of JJ's application and cites concerns over potential interference to Station WPLZ767.<sup>15</sup> Specifically, Cara contends that JJ's operations on frequency 451.7500 MHz pose a risk of interference to Lake Las Vegas' operations because Station WNGT994 does not afford the required adjacent channel interference protection to the subject facilities licensed to Lake Las Vegas as required by Section 90.187 of the Commission's Rules.<sup>16</sup> Therefore, Cara asks that we institute a proceeding to modify JJ's license to specify decentralized trunking.<sup>17</sup> While Cara has no relationship to Lake Las Vegas, we note that Cara expresses interest in using frequency 451.7500 MHz in the Las Vegas area,<sup>18</sup> presumably on a nonexclusive basis.

6. In its Opposition to Modification or, in the Alternative, Revocation of License dated October 26, 2000, JJ's argues that Cara lacks standing to file the petition because Cara is not authorized to operate on 451.7500 MHz.<sup>19</sup> In Cara's Reply to Opposition to Modification or, in the Alternative, Revocation of License, Cara notes that the Opposition does not address the interference concerns in the Petition.<sup>20</sup>

7. On March 2, 2001, the Branch requested that FIT respond to Cara's interference analysis of JJ's station and propose a solution, if JJ's application had been incorrectly coordinated.<sup>21</sup> By letter dated March 23, 2001, FIT argued that it followed the commonly accepted procedures in effect at the time it gave its frequency recommendation.<sup>22</sup> FIT admits, however, that if the revised procedures agreed to by the Land Mobile Communications Council (LMCC) in April 2000 were applied, JJ's application should not have been coordinated.<sup>23</sup>

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<sup>14</sup> See Petition.

<sup>15</sup> *Id.*

<sup>16</sup> 47 C.F.R. §90.187.

<sup>17</sup> See Petition.

<sup>18</sup> *Id.*

<sup>19</sup> Opposition to Petition for Modification or, in the Alternative, Revocation of License filed by JJ's Rooter Service, Inc. on October 19, 2000 (Opposition).

<sup>20</sup> Reply to Opposition to Petition for Modification or, in the Alternative, Revocation of License filed by Cara Enterprises, Inc. on November 6, 2000.

<sup>21</sup> Letter dated March 7, 2001 from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Federal Communications Commission, to FIT.

<sup>22</sup> Letter dated April 6, 2001 from Kenton E. Sturdevant, Executive Vice President, FIT, to Mike Regiec, Federal Communications Commission at 2.

<sup>23</sup> *Id.* at 2-3.

### III. DISCUSSION

8. We will treat Cara's request as an informal request for Commission action under Section 1.41 of the Commission's Rules.<sup>24</sup> Cara argues that a modification or revocation is warranted because JJ's station does not afford the required interference protection to Lake Las Vegas' station.<sup>25</sup> FIT asserts that JJ's application was coordinated in compliance with the LMCC procedures then in effect.

9. Based upon our analysis, we conclude that the JJ's application should not have been coordinated because the proposed operations did not provide the requisite interference protection to the Lake Las Vegas operations. Specifically, FIT's coordination was not in compliance with Sections 90.187(b)(2)(i) and (ii) of the Commission's Rules,<sup>26</sup> which were in effect at the time of the coordination. At 451.7375 MHz, Lake Las Vegas' center frequency is separated from JJ's frequency by 12.5 kHz, and JJ's operates on a 25 kHz channel. The service area of JJ's overlaps a 70-mile radius circle around Lake Las Vegas. The frequency separation is less than 15 kHz, so Lake Las Vegas is considered an "affected licensee" under Section 90.187. Unless Lake Las Vegas consented to JJ's application in writing, JJ's should not have been authorized to operate in the centralized trunking mode on 451.7500 MHz. Further, JJ's operations do not comply with the current contour overlap criteria as specified in Section 90.187(b)(2)(iii).<sup>27</sup> JJ's 21 dBu (50,10) interference contour, with a 19.5 dBu derating factor added to compensate for the 12.5 kHz offset, overlaps the 4-km radius service area of Lake Las Vegas. Therefore, objectionable interference is considered to exist as a result of JJ's operations.<sup>28</sup>

10. FIT and JJ's contend that Cara does not have standing to file its Petition. Since we are treating the Petition as an informal complaint, we need not address whether Cara would have standing to file a formal pleading. While we are not obligated to consider the merits of an informal request,<sup>29</sup> we believe consideration of Cara's complaint is appropriate because of the need to resolve an improper coordination. We believe that Section 316 of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.<sup>30</sup> Section 316(a) permits the Commission, on its own motion, to modify a station license if the action will promote the public interest, convenience, and necessity.<sup>31</sup> In this connection, we note that the proposed modification would serve the public interest by preserving the existing coverage areas of the affected parties and preventing harmful interference, while not unduly disrupting JJ's operations.

11. As discussed above, the coordination of JJ's application was defective. Thus, we believe that a modification of the subject JJ's license for Station WNGT994 to require JJ's to monitor on

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<sup>24</sup> 47 C.F.R. § 1.41.

<sup>25</sup> See Petition.

<sup>26</sup> 47 C.F.R. § 90.187(b)(2)(i) and (ii).

<sup>27</sup> 47 C.F.R. § 90.187(b)(2)(iii).

<sup>28</sup> *Id.*

<sup>29</sup> See *Automobile Club of Southern California, Order on Reconsideration*, 16 FCC Rcd 2934, 293\_ ¶ 6 (WTB PSPWD 2001).

<sup>30</sup> 47 U.S.C. § 316(a)(1).

<sup>31</sup> 47 U.S.C. § 316(a). Section 316(a) requires that we notify the affected station(s) of the proposed modification(s) and the public interest reasons for the action, and afford at least 30 days to respond.

451.7500 MHz before transmitting is appropriate to prevent harmful interference to Lake Las Vegas' operations. In accordance with Section 1.87(a) of the Commission's Rules,<sup>32</sup> we will not issue a modification order until JJ's has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, JJ's must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, DC 20554.<sup>33</sup> If no protest is filed, JJ's will have waived its right to protest the modification and will be deemed to have consented to the modification.

#### IV. CONCLUSION

12. For the reasons stated above, we conclude that the coordination of JJ's application was defective. As a result, we believe that the license grant to JJ's was defective. Accordingly, we propose to modify JJ's license for Station WNGT994 by changing the class code on frequency 451.7500 MHz from FB8 to FB6, which will require JJ's to monitor before transmitting on this channel in order to protect adjacent and co-channel licensees from harmful interference.

#### V. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Petition for Modification or, in the Alternative, Revocation of License for Station WNGT994, submitted by Cara on October 19, 2000, IS GRANTED to the extent indicated above and IS OTHERWISE DENIED.

14. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Service Station WNGT994, held by JJ's Rooter Service, Inc., BE MODIFIED by changing the station class code on frequency 451.7500 MHz from FB8 to FB6.

15. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to JJ's Rooter Service, Inc., 3504 Chevy Chase Avenue, Las Vegas, Nevada, 89110.

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<sup>32</sup> 47 C.F.R. § 1.87(a).

<sup>33</sup> The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (rel. Dec. 14, 2001).

16. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau